rates of payment shall be considered true and correct unless audited or reviewed by the department within 18 months after July 1, 1969, the close of the period covered by the report, or after the date of submission of the original or amended report by the provider, whichever is later. Moreover the cost reports and other data for cost reporting periods beginning on January 1, 1972, and thereafter shall be considered true and correct unless audited or reviewed within three years after the close of the period covered by the report, or after the date of submission of the original or amended report by the provider, whichever is later.

Nothing in this section shall be construed to limit the correction of cost reports or rates of payment when inaccuracies are determined to be the result of intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the provider or inability to reach agreement on the terms of final settlement.

Notwithstanding any other provision of law, nursing facilities and all categories of intermediate care facilities for the developmentally disabled which have received and are receiving funds for salary increases pursuant to Sections 14110.6 and 14110.7 shall maintain payroll and personnel records for examination by auditors from the department and the Labor Commissioner beginning March 1985 until the records have been audited, or until December 31, 1992, whichever occurs first.

(Added by Stats.1977, c. 1046, p. 3172, § 6. Amended by Stats.1978, c. 429, § 248.1, eff. July 17, 1978, operative July 1, 1978; Stats.1981, c. 1129, p. 4408, § 1; Stats.1985, c. 787, § 1, eff. Sept. 19, 1985; Stats.1989, c. 731, § 23; Stats.1990, c. 1329 (S.B.1524), § 32, eff. Sept. 26, 1990.)

Historical and Statutory Notes

Section 2 of Stats.1978, c. 19, p. 80, amended by Stats.1981, c. 1129, p. 4410, § 2, and § 2.5 of Stats.1978, c. 19, added by Stats.1981, c. 1129, p. 4412, § 3, and amended by Stats.1985, c. 787, § 2, provide:

"Sec. 2. (a) The Legislature hereby finds and declares that a high rate of turnover among staff in intermediate care facilities and skilled nursing facilities diminishes the quality of care rendered to patients in those facilities. The Legislature further finds that the turnover among employees of those facilities is substantially attributable to the fact that the wages paid those employees are generally lower than the wages paid employees of other health care institutions in similar job classifications. It is the intent of the Legislature that Medi-Cal reimbursement rates for skilled nursing facilities and intermediate care facilities, to the extent feasible, be set at levels sufficient to allow those employees to be paid at wages which are sufficient to reduce turnover among such employees, in order to improve the level and quality of patient care.

"(b) The Legislature further finds that the rates for wages contained in this act were developed with recognition of the costs of increased wages and related benefits. It is the intent of the Legislature that the funds resulting from the Medi-Cal rate increases provided in this section be used for wage increases and for costs of normal benefit increases related to the wage and salary increases.

"(c) Notwithstanding any other provision of law, the State Director of Health Services shall establish and implement regulations effective March 1, 1978, that establish a payment rate for intermediate care facilities and skilled nursing facilities as defined in Section 1250 of the Health and Safety Code, which is sufficient to provide an increase of two dollars and twenty-eight cents ($2.28) per patient-day with respect to skilled nursing facilities and one dollar and eighty-four cents ($1.84) per patient-day with respect to intermediate care facilities, for wages and benefits of nonadministrative employees. The increase required by this section shall be in addition to any future mandatory increases required by federal or state law. The rate shall provide funding for the portion of additional costs necessary to implement the wage and benefit increase required by this

section attributable to Medi-Cal patients. The portion of those additional costs shall be the same as the ratio of Medi-Cal patients to the total patients in the facility.

"(d) Each skilled nursing facility or intermediate care facility shall certify that funds received pursuant to this section for the period commencing March 1, 1978, to and including June 30, 1978, are expended for employee wages and benefits, except if the entry level wages of the lowest paid nonadministrative employee of a skilled nursing facility or an intermediate care facility exceeds three dollars and ninety-seven cents ($3.97) per hour on the effective date of this section, the funds received pursuant to regulations adopted pursuant to this section shall be used to ensure the continued delivery of quality care in that facility. The base, from which employee wages and benefits are increased pursuant to this section, shall be the facility payroll for the month of December, 1977, but including only nonovertime hours worked by covered employees, plus any amount received pursuant to Section 1439.7 of the Health and Safety Code. For purposes of determining the amount of Medi-Cal funds to be distributed for employee wages and benefits, the total Medi-Cal patient-days recorded by the facility in the month of December, 1977, shall be multiplied by the amount per patient-day specified in subdivision (c) of this section.

"(e) The director shall inspect relevant payroll and personnel records of skilled nursing facilities and intermediate care facilities which are reimbursed for Medi-Cal patients under the rate of reimbursement established pursuant to subdivision (c) of this section to insure that the wage and benefit increases provided for have been implemented.

"(f) Any facility which is paid under the rate provided for in which the director finds has not made the wage and benefit increases provided for shall be liable to the employees for the amount of funds paid to the facility based upon the wage and benefit requirements provided for by this section but not distributed to employees for wages and benefits. The facility shall make payment of the outstanding amounts to the state for appropriate distribution, plus an amount equal to 10 percent of the funds not so distributed, to be retained by the state as a penalty.

"(g) On or before July 1, 1978, and annually thereafter, each skilled nursing facility or intermediate care facility shall certify to, and in the manner prescribed by, the director, all of the following:

"(1) All nonadministrative employees of the facility employed less than three months receive at least an entry level wage amounting to the prevailing federal minimum wage rate plus 50 percent of the average hourly wage increase established pursuant to this section for that facility during the period March through June, 1978.

"(2) All nonadministrative employees of the facility employed three months or more receive at least the prevailing federal minimum wage rate plus the average hourly wage increase established pursuant to this section for that facility during the period March through June, 1978; provided, however, that no employee then employed shall receive a wage less than that which that person received pursuant to this section for the period March through June, 1978, after July 1, 1978.

"(3) Any wage increase required pursuant to subdivision (a) of Section 1338 of the Health and Safety Code is in addition to any minimum wages provided in this subdivision.

"Sec. 2.5. (a) The Labor Commissioner is hereby authorized to audit payroll and personnel records of skilled nursing facilities and intermediate care facilities for the purposes of ensuring compliance with the wage levels provided for in this chapter.

"(b) The Labor Commissioner is hereby authorized to recover from the skilled nursing facility or the intermediate care facility any wages less than the minimum provided for in this chapter. The recovered funds shall be provided to the employees who were underpaid.

"(c) The Labor Commissioner may recover any funds not used for increases in wages pursuant to Sections 14110.6 and 14110.7 of the Welfare and Institutions Code. The recovered funds shall be provided to the employees who were underpaid. All penalties collected pursuant to these sections shall be forwarded to the Controller for deposit in the General Fund.

"(d) The Labor Commissioner is hereby authorized to impose any other penalties within his or her powers against any skilled nursing facility or intermediate care facility that is in violation of the wage requirements of this chapter. The amount of any penalties already paid to the State Department of Health Services pursuant to this chapter shall be deducted from the amount of any unpaid penalties imposed by the Labor Commissioner pursuant to this chapter. The amount of any penalties already paid to the Labor Commissioner pursuant to this chapter shall be deducted from the amount of any unpaid penalties imposed by the State Department of Health Services pursuant to this chapter.

"(e) Any evidence of failure to pay wage rates as provided for by this chapter shall be provided to the Labor Commissioner."

Amendment of this section by § 1.5 of Stats. 1981, c. 1129, p. 4409, failed to become operative under the provisions of § 4 of that Act.

Code of Regulations References

Requirements for electronic claims submission, see 22 Cal. Code of Regs. 51502.1.

Library References

Social Security and Public Welfare ⇐241.65. WESTLAW Topic No. 356A.

C.J.S. Social Security and Public Welfare §§ 137, 138.

Notes of Decisions

Limitation of actions 1

1. Limitation of actions

Even if Medi-Cal services provider was entitled to avoid exhaustion of administrative remedies and proceeded directly to trial court on its appeal of 1972 audit adjustment, it did not do so within the applicable statute of limitations and its claim was barred for that reason. Pacific Coast Medical Enterprises v. Department of Benefit Payments (1983) 189 Cal.Rptr. 558, 140 C.A.3d 197.

§ 14170.1. Underpayments for pharmaceutical services; credit against overpayments

(a) Prior to the issuance to a provider of pharmaceutical services of any demand for payment pursuant to an audit or examination conducted under Sections 10722 and 14170, the amount of any underpayment to the provider for validly submitted claims or for valid claims which have inadvertently not been submitted and which arose during the audit period shall be determined and credited toward the amount of any overpayment due to the department. This section shall apply to all audits and examinations conducted under Sections 10722 and 14170 relative to amounts paid during the audit period for services provided to Medi-Cal beneficiaries. No audit may be reopened to provide for underpayments in which a final decision has been reached pursuant to Section 14171 or in which a certificate has been filed pursuant to Section 14172.

(b) When a provider of pharmaceutical services asserts that a claim has been underpaid for purposes of receiving a credit against overpayments, as authorized by this section, the provider shall submit to the department information and documentation sufficient to resolve any dispute as to whether such claim was in fact underpaid.

(c) For purposes of this section, the term "underpayments" shall include errors made by the pharmacist and errors made by the fiscal intermediary in determining payments for claims submitted within the billing time limits specified in Section 14115.

(Added by Stats.1983, c. 1146, § 1. Amended by Stats.1986, c. 562, § 1.)

Library References

Social Security and Public Welfare ⇐241.110. WESTLAW Topic No. 356A.

C.J.S. Social Security and Public Welfare § 136.

(d) After following this procedure, a provider who is not satisfied with the decision by the designated county department may seek appropriate judicial remedies in compliance with Section 14104.5 of the Welfare and Institutions Code, no later than one year after receiving notice of the decision.

NOTE: Authority cited: Section 14132.95, Welfare and Institutions Code; Section 8, Chapter 939, Statutes of 1992; Section 3, Chapter 7, Statutes of 1993. Reference: Section 14132.95, Welfare and Institutions Code; Section 1396d(a)(7) of Title 42, of the United States Code; Article 7 (commencing with Section 12300) of Part 3 of Division 9 of the Welfare and Institutions Code; Section 440.170(f) of Title 42 of the Code of Federal Regulations.

HISTORY

1. New section filed 4-14-93 as an emergency; operative 4-14-93. Submitted to OAL for printing only pursuant to section 8, AB 1773 (Chapter 939, Statutes of 1992) (Register 93, No. 16).

Article 1.5. Provider Audit Appeals

§ 51016. Definitions.

(a) The following definitions shall be used throughout this article unless otherwise noted.

(1) Audits or Examination Report. "Audit or examination report" means a document that presents the final audit or examination findings and is formally issued to the provider by the Department upon the completion of the audit or examination.

(2) Completed Audit or Examination. "Completed audit or examination" means an audit or examination for which an audit or examination report has been issued.

(3) "Date of mailing" means the date postmarked on the envelope if postage was prepaid and the envelope was properly addressed.

(4) Demand for Repayment. "Demand for repayment" means a written notice issued to the provider by the Department that identifies the amount of overpayment, determined by an audit or examination, that must be repaid. The notice may be made through the issuance of a statement of liability, statement of account status, letter, or any combination of the foregoing.

(5) Duplicate. "Duplicate" means a counterpart or facsimile copy of the original produced by the same impression or from the same matrix as the original or by some technique of accurate reproduction.

(6) "Exit conference" means an informal meeting, between the provider and those Department representatives responsible for the audit or examination, at which the preliminary findings of the audit or examination are discussed.

(7) Formal Hearing. "Formal hearing" means an administrative hearing conducted by a hearing officer pursuant to Section 14171(b), Welfare and Institutions Code, and the provisions of this article.

(8) Hearing Auditor. "Hearing auditor" means an individual designated to conduct the informal level of review.

(9) Hearing Officer. "Hearing officer" means a hearing officer appointed by the Director pursuant to Section 14171(b), Welfare and Institutions Code.

(10) Informal Conference. "Informal conference" means a proceeding conducted in person or by telephone, for the purpose of scheduling the informal level of review and formal hearing; exchanging documents; and resolving other preliminary matters.

(11) Informal Level of Review. "Informal level of review" means an informal hearing for institutional providers and a pretrial conference for non-institutional providers, held by a hearing officer or hearing auditor prior to a formal hearing to clarify or resolve facts and issues in dispute.

(12) Party. "Party" means the provider, the Department and any person, other than a hearing officer, allowed to appear in the proceedings.

(13) Institutional Provider. "Institutional provider" means any of the following:

(A) Any individual, entity or organization of a type required to be licensed pursuant to either Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) of Division 2, Health and Safety Code, or exempt from licensure pursuant to Section 1206(b) through (l) Health and Safety Code, or Section 1254 Health and Safety Code which provides services or supplies under the Medi-Cal program, and is subject to audit by the Department.

(B) Any individual, entity, or organization of a type required to file a cost report or cost information with the Department.

(14) Non-institutional Provider. "Non-institutional provider" means any individual, entity, or organization other than those defined in subsection (13) who provides services or supplies under the Medi-Cal program, and who is subject to audit by the Department.

(15) File. "File" means delivery of a pleading or other paper to, and its date stamping by, the Office of Administrative Hearings and Appeals, Office of Legal Services, Department of Health Services.

(16) Serve. "Serve" means the delivery of a pleading or other paper on a party in the manner provided by Government Code Section 11505(c).

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Sections 14171 and 14172.5, Welfare and Institutions Code.

HISTORY

1. Repealer of Section 51016 and new Article 1.5 (Sections 51016-51043) filed 3-3-76; designated effective 4-1-76 (Register 76, No. 10). For prior history, see Register 72, No. 11, and Register 75, No. 23.
2. Repealer of Article 1.5 (Sections 51016-51043) and new Article 1.5 (Sections 51016-51047) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).
3. Amendment filed 10-11-84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 41).
4. Amendment filed 9-17-85; effective thirtieth day thereafter (Register 85, No. 38).

§ 51017. Provider Audit Hearing.

A provider may request a hearing under the provisions of this article to examine any disputed audit or examination finding which results in an adjustment to Medi-Cal program reimbursement or reimbursement rates by submitting a Statement of Disputed Issues to the Department in accordance with Section 51022.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7-15-85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51018. Home Office—Chain Organization Related Entities.

The home office of a chain organization has no separate right to an individual hearing under this article. Where a provider in a chain organization disputes an audit or examination finding concerning the allocation of home office costs, other related entity costs or any other matter affecting all or some of the providers in the chain organization, all providers in the chain organization that are affected by the issue in dispute shall be made parties to the proceedings for the purpose of resolution of that issue only, in accordance with Section 51030.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51019. Amended Cost Reports.

(a) An amended cost report may be submitted by a provider and accepted by the Department for the fiscal period or periods for which proceedings are pending under this article.

(b) The hearing officer may suspend the proceedings until identification of any additional disputes that may result from an amended report filed by a provider.

(c) Additional issues which are raised by accepted cost report amendments may be included in the proceedings at the request of the provider in accordance with Section 51022.

(d) The hearing officer may dismiss the proceeding without prejudice to the right to request a subsequent hearing under this article when the hearing officer deems this course to be appropriate.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

Register 93, No. 48, 11-26-93

§ 51020. Amended Audit Report.

(a) An amended audit report may be issued by or on behalf of the Department for the fiscal period or periods for which proceedings are pending under this article.

(b) The hearing officer may suspend the proceedings until identification of any additional disputes that may result from an amended audit report.

(c) Additional issues in dispute which are raised by the amended audit report may be included in the proceedings at the request of the provider in accordance with Section 51022.

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(d) The hearing officer may dismiss the proceeding without prejudice to the right to request a subsequent hearing under this article when the hearing officer deems this course to be appropriate.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51021. Exit Conference and Audit Report.

(a) The provider shall be afforded a reasonable opportunity to participate in an exit conference after the conclusion of any field audit or examination of records or reports of a provider, by or on behalf of the Department, and prior to the issuance of the Audit Report. The purpose of the exit conference is to:

(1) Inform the provider of the audit or examination findings and the supporting reasons and evidence.

(2) Inform the provider of the specific instances in which no records were found to substantiate claims billed to the program which was the subject of the audit or examination.

(3) Allow the provider an opportunity to present relevant information concerning the audit or examination findings.

(b) The provider must make available to the Department any records which were identified as unavailable for review or missing within 15 calendar days of the exit conference to be included in the Audit Report.

(c) Where the audit or examination involves the records or reports of a provider of pharmaceutical services:

(1) The auditor or reviewer shall identify missing prescriptions by beneficiary name, beneficiary number, prescription number and date of service to the provider at the exit conference.

(2) The audit worksheets relating to exceptions taken shall be furnished to the provider subsequent to the submission of missing prescriptions pursuant to subsection (b), in the event that a request for repayment of an overpayment is made.

(d) An audit or examination findings issued by or on behalf of the Department shall include the following:

(1) A complete copy of the audit report which identifies all items to which exception has been taken, the monetary value of each and the reason for the exception, including citation to the appropriate statutory or regulatory authority.

(2) Notice of the provider's right to a hearing pursuant to the provisions of this article. A copy of the provisions of this article shall accompany such notice.

NOTE: Authority cited: Sections 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14170 and 14171, Welfare and Institutions Code.

HISTORY

1. Editorial correction of NOTE filed 12-14-84 (Register 84, No. 50).

§ 51022. Request for Hearing.

(a) An Institutional provider may request a hearing for any disputed audit or examination finding as follows:

(1) A written request shall be filed with the Department within 60 calendar days of the receipt of the written notice of the audit or examination findings.

(2) This request may be amended at any time during the 60 calendar day period.

(b) A Non-institutional provider may request a hearing on any disputed audit or examination finding as follows:

(1) A written request shall be filed with the Department within 30 calendar days of the receipt of the audit or examination finding.

(2) This request may be amended at any time during the 30 calendar day period.

(c) All late requests by either Institutional or Non-institutional providers shall be denied and the audit or examination findings deemed final unless the provider establishes in writing good cause for late filing within 15 calendar days of being notified of the untimeliness of its request.

(d) The request shall be known as "Statement of Disputed Issues." It shall be in writing, signed by the provider or the authorized agent, and shall state the address of the provider and of the agent, if any agent has been designated. A provider or the agent shall specify the name and address of the individual authorized on behalf of the provider to receive any and all documents, including the final decision of the Director, relating to proceedings conducted pursuant to this article. The Statement of Disputed Issues need not be formal, but it shall be specific as to each issue as are in dispute, setting forth the provider's contentions as to those issues and the estimated amount each issue involves. The information specified in subsection (e) shall also be included. If the hearing officer determines that a Statement of Disputed Issues fails to state the specific grounds upon which objection to the specific item is based, the provider or the agent shall be notified that it does not comply with the requirement of this regulation, and the reasons therefor.

(1) An Institutional provider shall be granted 30 calendar days after the date of the mailing of the notice of deficiency to the provider within which to file an amended Statement of Disputed Issues.

(2) A Non-institutional provider shall be granted 15 calendar days after the date of mailing of the notice of deficiency within which to file an amended Statement of Disputed Issues.

(3) If within the time permitted in (1) or (2) above, the Institutional or Non-institutional provider, respectively, or the agent fails to amend its appeal as notified, the appeal as to those issues shall be rejected.

(e) The request shall also specify whether the provider does or does not wish that an informal level of review among the parties be held, together with the reasons therefor. Either party may request, or the hearing officer may order, that a telephone conference call be initiated among the parties for discussion of the advisability of conducting an informal level of review. The hearing officer shall decide whether an informal level of review would be appropriate and notify the parties of this decision in writing.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10-11-84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 41).
2. Editorial correction of Authority cite (Register 95, No. 45).

§ 51023. Informal Level of Review.

(a) If the hearing officer determines that an informal level of review is appropriate, it shall be ordered and scheduled as soon as reasonably possible. The hearing officer, or a hearing auditor designated by the hearing officer, shall preside at this informal level of review.

(b) Written notice of the time and place of informal level of review shall be mailed to each party at least 30 calendar days before the date of the informal level of review. This period may be shortened with the consent of the parties. Any party may waive notice. This notice may be combined with the notice of formal hearing.

(c) Efforts shall be made to resolve the facts and issues in dispute in a fair and equitable manner, subject to the requirements of state and federal law. Matters in dispute, raised in the provider's Statement of Disputed Issues pursuant to Section 51022, which are not discussed or raised at the informal level of review shall not be deemed waived.

(d) The proceedings at the informal level of review shall be electronically recorded unless the parties agree otherwise.

(e) The results of the informal level of review shall be:

(1) Served on the parties, within a reasonable time, in the form of a written Report of Findings or Pretrial Order.

(2) For Institutional providers, the report of findings shall be considered as final unless the provider submits written request for a formal hearing in accordance with Section 51024.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 10-11-84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 41).
2. Amendment of subsection (c) filed 7-15-85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51024. Request for Formal Hearing.

(a) The form and content of the request shall be as specified in Section 51022(d).

this paragraph shall apply only to those overpayments determined by audit reports issued after April 6, 1976 and before June 28, 1981. In all other cases, interest shall be paid in accordance with the provisions of Sections 14171(e) and 14172.5, Welfare and Institutions Code.

(f) As used in this section, "Statement of Account Status" also includes statement of accountability or demand for repayment.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Sections 14171, 14171.5 and 14172.5, Welfare and Institutions Code.

HISTORY

1. Amendment filed 9-15-82 as an emergency; effective upon filing (Register 82, No. 38). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1-13-83.
2. Certificate of Compliance transmitted to OAL 1-13-83 and filed 2-16-83 (Register 83, No. 8).
3. Editorial correction of NOTE filed 12-13-84 (Register 84, No. 50).
4. Amendment filed 9-17-85; effective thirtieth day thereafter (Register 85, No. 38).
5. Editorial correction of subsection (f) (Register 95, No. 45).

§ 51048. Administrative Review of Performance Under Selective Provider Contracts.

(a) As an alternative to judicial review pursuant to Welfare and Institutions Code Section 14087.27(a), administrative review of disputes between a contracting hospital and the state relating to performance under the Selective Provider Contracting Program shall be heard by an independent hearing examiner appointed by the Director of the Department of Health Services.

(b) The independent hearing examiner shall conduct an administrative hearing and render a proposed decision to be adopted by the Director pursuant to the applicable procedural requirements of Article 1.5, Provider Audit Appeals (Sections 51016–51047) with the following exceptions:

(1) There shall be no exit conference or informal hearings.

(2) All references to a hearing officer shall apply to the independent examiner appointed by the Director pursuant to Welfare and Institutions Code Section 14087.27.

NOTE: Authority cited: Sections 14124.5 and 14082, Welfare and Institutions Code; Section 57, Chapter 328, Statutes of 1982; and Chapter 1594, Statutes of 1984. Reference: Section 14087.27, Welfare and Institutions Code.

HISTORY

1. New section filed 10-6-82 as an emergency; effective upon filing (Register 82, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2-5-83.
2. Certificate of Compliance transmitted to OAL 12-31-82 and withdrawn 1-28-83 (Register 83, No. 12).
3. New section refiled 1-28-83 as an emergency; effective upon filing (Register 83, No. 12). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-28-83.
4. Certificate of Compliance transmitted to OAL 5-26-83 and filed 6-30-83 (Register 83, No. 27).
5. Editorial correction of subsection (b) (Register 95, No. 45).

Article 1.6. Skilled Nursing Facility and Intermediate Care Facility Certification Appeals Procedure

§ 51048.1. Limitations.

(a) A skilled nursing and/or intermediate care facility Medi–Cal provider may, in accordance with the regulations contained in Sections 51048.2 through 51048.8, appeal the decision of the Department that a facility is not qualified to participate in the Medi–Cal program.

(b) The Department in rendering its determination shall set forth the pertinent facts and conclusions upon which the determination is made, and shall notify the provider of its right to appeal under subdivision (a).

(c) The effective date of a determination rendered under this article is as follows:

(1) A determination not to renew a certification is effective on the date the existing certification actually expires.

(2) A determination to deny a certification is effective upon the receipt of the determination by the provider, except, if the provider files a request for reconsideration under Section 51048.3, the determination shall be effective upon receipt of the reconsidered determination by the provider.

(d) These appeal processes are only available to Medi–Cal providers of skilled nursing facilities who do not participate in the Medicare program. Providers who participate in both Medi–Cal and Medicare may appeal certification decisions to the Department of Health and Human Services in accordance with 42 CFR. 405.1501 et seq. A final decision rendered pursuant to 42 CFR 405.1501 et seq. is binding for purposes of Medi–Cal participation.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

HISTORY

1. New Article 1.6 (Sections 51048.1–51048.8) filed 7-31-85; effective thirtieth day thereafter (Register 85, No. 31).

§ 51048.2. Right to a Reconsideration.

(a) A skilled nursing and/or intermediate care facility provider who disagrees with a determination that the skilled nursing or intermediate care facility does not qualify as a provider of services in the Medi–Cal program may, in accordance with Section 51048.3, request that the Department reconsider that decision.

(b) The reconsideration of a nonrenewal of an existing provider agreement shall be completed prior to the end of the certification period.

(c) The reconsideration of a denial of an initial application for certification shall be made within 30 days of the receipt of the request for a reconsideration.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

HISTORY

1. Editorial correction of subsection (a) (Register 95, No. 45).

§ 51048.3. Request for Reconsideration.

(a) If a provider or authorized representative of the provider requests a reconsideration, the request shall be filed within 15 days after the date of receipt of notice of the determination that the provider does not qualify as a Medi–Cal provider. The request shall be filed with the Director of the Department of Health Services or the designee authorized to accept such requests.

(b) A request for reconsideration shall:

(1) Be in writing.

(2) State the reasons upon which the provider disagrees with the determination.

(3) Include relevant evidence.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

§ 51048.4. Reconsidered Determination.

(a) The Department shall review each request for reconsideration that is filed in accordance with Section 51048.2. The Department shall reconsider the determination and the reasons on which it was based. The Department shall issue, within 30 days of the receipt of the request, a reconsidered determination affirming, revising, in whole or in part, or reversing the determination.

(b) The reconsidered determination shall be based upon the evidence considered in making the original determination and any other evidence submitted by the provider and verified by the Department.

(c) The written reconsidered determination shall be mailed to the provider or his authorized representative. The reconsidered determination shall:

(1) Contain the reason or reasons for affirming, revising or reversing the determination.

(2) Inform the provider of the right to a full evidentiary hearing.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 14100.1, Welfare and Institutions Code.

§ 51048.5. Right to Full Evidentiary Hearing.

(a) A skilled nursing facility or intermediate care facility provider which disagrees with the Department's reconsidered determination that the skilled nursing facility or intermediate care facility does not qualify as a provider of services in the Medi–Cal program may, by complying with Section 51048.6 request a full evidentiary hearing or the provider

(b) A party may request the disqualification of a hearing officer by filing an affidavit stating in detail the grounds upon which it is claimed that a fair and impartial hearing cannot be given or that the hearing officer has an interest in the proceeding. The hearing officer shall immediately present the affidavit to the Chief Counsel of the Department who shall:

(1) Investigate the allegations and advise the complaining party in writing of the decision granting or denying the request to disqualify the hearing officer. A copy of the decision shall be mailed to the other parties. Or

(2) Reassign the case to another hearing officer without investigation.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (b)(1) filed 7-15-85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51044. Decision.

(a) The hearing officer shall take the matter under submission at the conclusion of the hearing. A proposed decision, in a form that may be adopted as the decision of the Director, shall be submitted to the Director as soon as practical. A copy of the proposed decision, upon submission to the Director, shall be:

(1) Filed by the Department as a public record.

(2) Served by the Department on each party in the case and each party's representative.

(b) The Director may:

(1) Adopt the proposed decision without reading or hearing the record.

(2) Reject the proposed decision and have a decision prepared based upon the documentary and electronically recorded record, with or without taking additional evidence. The Director shall decide no case provided for in this paragraph without affording the parties the opportunity to present either oral or written argument.

(3) Refer the matter to the hearing officer to take additional evidence. If the case is so assigned, the hearing officer shall prepare a proposed decision as provided in subsection (a), upon the additional evidence and the documentary and electronically recorded record of the prior hearing. A copy of such proposed decision shall be furnished to each party and each party's representative as prescribed in subsection (a).

(c) The decision shall be final upon adoption by the Director. Copies of the decision of the Director shall be mailed by certified mail to the designated representative of the provider.

(d) A dismissal may be issued if a provider fails to appear at a formal hearing. A copy of such dismissal shall be mailed to each party together with a statement of the provider's right to reopen the hearing.

(e) The Director may vacate any dismissal if the provider makes application in writing, within ten calendar days after personal service or receipt of such dismissal, showing good cause for failure to appear at the hearing. Lack of good cause shall be inferred if a continuance of the formal hearing is not requested promptly upon discovery of the reasons for failure to appear at the hearing.

(f) If a party to a formal hearing other than the provider fails to appear at a hearing and the hearing officer issues a decision on the merits adverse to that party's interests, the decision shall be accompanied by a statement of the party's right to make application to vacate the decision. The application may be in writing and shall be made within ten calendar days after personal service or mailing of the decision. Upon a showing of good cause for failure to appear at the hearing, the Director may issue an order to vacate the decision and the matter may be set for further hearing. Lack of good cause will be inferred when a continuance of the hearing was not requested promptly upon discovery of the reasons for failure to appear at the hearing.

(g) The parties shall be given written notice of an order granting or denying any application to vacate a decision.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51045. Reconsideration.

(a) The Department may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 calendar days after delivery or mailing of a decision to the provider. The Department may grant a stay of expiration of its power to order reconsideration:

(1) for up to 30 days for the purpose of enabling a party to file a petition for reconsideration; or

(2) for up to 10 days when needed solely for the purpose of considering a petition filed prior to expiration of its power to order reconsideration.

The petition of a party shall be deemed denied if the Department takes no action within the time allowed for ordering reconsideration.

(b) The case may be:

(1) Reconsidered by the Department on all the pertinent parts of the records and such additional evidence and arguments as may be permitted.

(2) Assigned to a hearing officer for further written or oral hearing.

(c) The decision for a reconsideration assigned to a hearing officer shall be subject to the procedure provided in section 51044.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Change without regulatory effect amending subsection (a) filed 10-4-90 pursuant to section 100, title 1, California Code of Regulations (Register, No. 45).

§ 51046. Judicial Review.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Repealer filed 7-15-85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51047. Recovery of Overpayments.

(a) When it is established upon audit that an overpayment has been made to a provider, the Department shall begin liquidation of any overpayment to a provider 60 days after issuance of the first Statement of Accountability or demand for repayment. The demand for repayment or Statement of Accountability shall be issued no later than 60 days after the issuance of the audit or examination report establishing such overpayment. When a noninstitutional provider has filed a request for hearing pursuant to Section 51022 of this Article, liquidation of the disputed overpayments shall be deferred until the appeal is rejected or a final administrative decision is rendered. The overpayment shall be recovered by any of the following methods:

(1) Lump sum payment by the provider.

(2) Offset against current payments due to the provider.

(3) A repayment agreement executed between the provider and the Department.

(4) Any other method of recovery available to and deemed appropriate by the Director.

(b) An offset against current payments shall continue until one of the following occurs:

(1) The overpayment is recovered.

(2) The Department enters into an agreement with the provider for repayment of overpayment.

(3) The Department determines, as a result of proceedings under this article, that there is no overpayment.

(c) The provider shall pay interest at the rate of seven percent per annum on any unrecovered overpayment in all cases where the statement of account status was issued before June 28, 1981. In all other cases, the provider shall pay interest as provided by Welfare and Institutions Code Section 14171(f).

(d) Nothing in this section shall prohibit a provider from repaying all or a part of the disputed overpayment without prejudice to his right to a hearing under this article.

(e) Any recovered overpayment that is subsequently determined to have been erroneously collected shall be promptly refunded to the provider, together with interest computed at the legal rate of seven percent per annum from the date of such liquidation or 60 days after issuance of the audit or examination findings, whichever is later. The provisions of

(2) Hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(3) The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

(f) The following additional exception to the "best evidence" rule (Evidence Code Section 1500) applies:

(1) A duplicate is admissible to the same extent as an original unless:

(A) A genuine question is raised as to the authenticity of the original or the duplicate.

(B) It would be unfair to admit the duplicate in lieu of the original.

(g) A hearing officer may question any party or witness and may admit any relevant and material evidence.

(h) The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts ad safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall set forth the order in which evidence will be received.

(i) The Department shall present its audit findings and evidence first at the hearing. The Department has the burden of proof of demonstrating, by a preponderance of the evidence, that the audit findings were correctly made. Once the Department has presented such a prima facie case, the burden of proof shifts to the provider to demonstrate, by a preponderance of the evidence, that the provider's position regarding disputed issues is correct.

(j) The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence.

(k) The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not speak the English language proficiently shall provide an interpreter, approved by the hearing officer, proficient in the English language and the language the witness will testify, to serve as interpreter during the hearing. The interpreter shall be paid by the party providing the inter-

...uthority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51038. Official Notice.

(a) The hearing officer shall take official notice of those matters which must be judicially noticed by a court under Section 451 of the Evidence Code. The hearing officer may take official notice of those matters set forth in Section 452 of the Evidence Code.

(b) Parties present at the formal hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto.

(c) Each party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the hearing officer.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51039. Continued or Further Hearings.

(a) A hearing officer may continue a formal hearing to another time or place if deemed advisable or upon request and a showing of good cause.

(1) Written notice of the time and place of the continued formal hearing, except as provided herein, shall be in accordance with this article.

(2) Oral notice of the time and place of the continued formal hearing may be given to each party present at the formal hearing. Such oral notice shall be confirmed in writing by the hearing officer subsequent to the formal hearing.

(b) The hearing officer may order a further formal hearing prior to the decision, if the hearing officer deems advisable or on a showing of good cause. Notice shall be given in accordance with Section 51025.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51040. Evidence.

(a) In Non-institutional provider cases, notwithstanding any other provision of these regulations, and unless otherwise ordered by the assigned Administrative Law Judge, the parties shall:

(1) Not less than ten (10) calendar days prior to the pretrial conference, file a list of all documents and other items to be offered into evidence at the formal hearing, except for impeachment or rebuttal, with a brief statement following each document describing its substance or purpose and the identity of the sponsoring witness.

(2) Not less than seven (7) calendar days prior to the date on which the formal hearing is scheduled to commence, exchange copies of all documents and other items to be offered into evidence at the formal hearing other than for impeachment or rebuttal. Each proposed exhibit shall be premarked for identification.

(3) Prior to the commencement of the formal hearing, any party proposing to object to the receipt in evidence of any proposed exhibit shall advise the opposing party of such objection. The parties shall confer with respect to any objections in advance of the formal hearing and attempt to resolve them. Failure to comply with the requirements of (1) or (2) above shall constitute a ground for objection to the introduction of undisclosed documents and other items, into evidence other than for impeachment or rebuttal.

(b) In all cases, the hearing officer, in order to obtain additional evidence necessary for the proper determination of the case, may:

(1) Continue the formal hearing and hold the record open for either party to produce additional evidence.

(2) Close the hearing and hold the record open in order to permit the introduction of additional documentary evidence. Any material submitted after the close of the formal hearing shall be made available to both parties and each party shall have the opportunity for rebuttal.

(3) Order a further formal hearing if the nature of the additional evidence or the refutation thereof makes a further hearing desirable.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

History

1. Amendment filed 10-11-84; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 84, No. 41).

§ 51041. Representation at a Formal Hearing.

(a) A hearing officer or hearing auditor may refuse to allow any person to represent a party in any hearing when the person:

(1) Engages in unethical, disruptive or contemptuous conduct.

(2) Intentionally fails to comply with the proper instructions or orders of the hearing officer or hearing auditor or the provisions of this article.

(b) This section shall not be construed to limit the right of a party or its representative to make evidentiary and procedural objections and state the reasons therefor.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

History

1. Amendment of subsection (a) filed 7-15-85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51042. Oral Argument and Briefs.

(a) The hearing officer shall grant oral and may grant written argument at the request of any party made prior to the close of the formal hearing. The parties shall be advised as to the time and manner within which written argument is to be filed.

(b) The hearing officer may require any party to submit written memoranda pertaining to any or all issues raised in the formal hearing.

NOTE: Authority cited: Sections 14105, 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51043. Disqualification of Hearing Officer.

(a) A hearing officer shall voluntarily withdraw from any proceedings in which the hearing officer:

(1) Cannot give a fair or impartial hearing.

(2) Has an interest

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(b) A party shall have the same rights as are accorded a party under the provisions of Section 11507.7 of the Government Code in the event that a request for discovery pursuant to this section has not been granted. In the event an order to show cause is issued, a copy shall be filed with each party.

(c) The provisions of this article provide the exclusive right to and method of discovery as to any proceeding governed by this article.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (a) filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).

§ 51033. Subpoenas and Witnesses.

(a) The hearing officer shall issue subpoenas and subpoenas duces tecum before the formal hearing, for attendance or production of documents at the formal hearing, as necessary or at the request of any party. The hearing officer may also issue subpoenas and subpoenas duces tecum after the formal hearing has commenced. Compliance with the provisions of Section 1985, California Code of Civil Procedure, shall be a condition precedent to the issuance of a subpoena duces tecum.

(b) The process issued pursuant to subsection (a) shall be extended to all parts of the State and shall be served in accordance with the provisions of Sections 1987 and 1988, California Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which he resides unless the distance be less than 150 miles from his place of residence except that the hearing officer, upon affidavit of any party showing that the testimony of such witness is material and necessary, may endorse on the subpoena an order requiring the attendance of such witness.

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the State or any political subdivision thereof, shall receive fees and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court.

(d) Witnesses appearing pursuant to subpoena, except the parties, who attend formal hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled, in addition to fees and mileage, to a per diem compensation of $3.00 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51034. Depositions.

(a) On verified petition of any party, the hearing officer may order that the testimony of any material witness residing within or without the State be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth:

(1) The nature of the pending proceeding.

(2) The name and address of the witness whose testimony is desired.

(3) A showing of the materiality of his testimony.

(4) A showing that the witness will be unable or cannot be compelled to attend.

(5) A request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose.

(b) The hearing officer's order for taking of testimony by deposition from a witness residing out-of-State shall be supported by a court order. The court order shall be obtained by filing a petition in the Superior Court of Sacramento County, in accordance with Section 11189, Government Code.

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51035. Affidavits.

(a) Any party may mail or deliver to the opposing party, at least ten calendar days prior to a formal hearing or a continued hearing, a copy of any affidavit to be introduced in evidence, together with a notice as provided in subsection (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, the right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not offered after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subsection (a) shall be substantially in the following form:

NOTICE

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the formal hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the day of mailing or delivering the affidavit to the opposing party).

NOTE: Authority cited: Sections 14105, 14124.5, and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

§ 51036. Preparation for Formal Hearing.

A party appearing at a formal hearing shall have necessary evidence and witnesses present and be ready to proceed. Each party shall make available sufficient copies, as indicated by the hearing officer, of any documents to be introduced in evidence. The hearing officer, if necessary and following reasonable notice, may require any or all parties to submit a written statement of contentions and reasons, together with any requested documents. Each party submitting written statements and documents shall also provide a copy to all other parties.

NOTE: Authority cited: Sections 14124.5 and 14171, Welfare and Institutions Code. Reference: Section 14171, Welfare and Institutions Code.

HISTORY

1. Amendment filed 7–15–85; effective thirtieth day thereafter (Register 85, No. 29).
2. Editorial correction of Authority cite (Register 95, No. 45).

§ 51037. Conduct of Formal Hearing.

(a) Testimony shall be taken only on oath, affirmation or penalty of perjury.

(b) The proceedings at the formal hearing shall be electronically recorded.

(c) Each party shall have the right to:

(1) Call and examine parties and witnesses.

(2) Introduce exhibits.

(3) Question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination.

(4) Impeach any witness regardless of which party first called the witness to testify.

(5) Rebut the evidence against him.

(d) The provider shall not be called to testify during presentation of the Department's prima facie case pursuant to subsection (i). A provider who thereafter fails to testify, in the provider's behalf, may be called and examined by the Department as if under examination.

(e) The formal hearing need not be conducted according to technical rules relating to evidence and witnesses.

(f) Relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

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